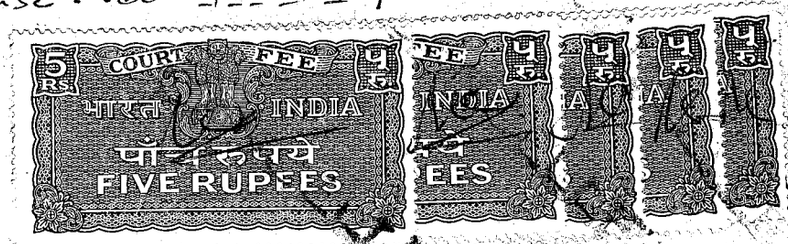
(2)

BEFORE THE HON'BLE HIGH COURT OF MADHYA PRADESH
JABALPUR

D.B. (Civil)

Misc. Pet 1756 /92.



Kamaljeet Singh Bhatia,
Age 37 years,
S/o. Shri Inderjeet Singh
Bhatia,
Budi Khar Ki Gali,
Dayal Bandh,
BILASPUR-M.P. ... PETITIONER.

9.5.92
N.S. Kumar
Advocate

Versus

R & D.R.
The Chairman,
Bilaspur Raipur Kshetriya
Gramin Bank, Dayal Bandh,
BILASPUR-M.P. ... RESPONDENT.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI OR ANY OTHER/DIRECTION OR ORDER.

The Petitioner named above submits as under:-

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1756 of 1992

Petitioner Kamaljet Singh Bhatia

Versus

Respondents The Chairman, Bilaspur Raipur Kshetriya Gramin Bank, Dayal Bandh, Bilaspur

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri N. K. Vyas, Advocate for the petitioner.

Shri P. K. Bhaduri, Advocate for the respondent.

ORAL ORDER

(10th July, 2006)

1. This petition filed under Article 226/227 of the Constitution of India impugns the order of dismissal dated 26.4.1988 (Annexure P/29-B) and the order dated 23.5.1989 (Annexure P/31) passed by the appellate authority.

2. The brief facts in nutshell, are that the petitioner was working as Branch Manager and posted at Baloda branch of Bilaspur Raipur Kshetriya Gramin Bank (for short 'the Bank'). The petitioner was holding the independent charge of Branch Manager at Hasod since 1981. The petitioner was served with the order dated 3.3.1982 (Annexure P/1) that a preliminary enquiry would be conducted with regard to the complaint made by Shri Nankuram Sahu and Shri Sabhapati Sahu and he was directed to participate in the preliminary enquiry conducted by Shri J.I.Saiyad.

3. Thereafter, first charge sheet dated 27.4.1982 (Annexure P/2) was served to the petitioner containing following charges:-

(a) That while making payment of Rs. 2500/- to Shri Nanku Ram Sahu on 6.2.82 you have paid less Rs. 230/- and thus misappropriated the amount.

(b) That while making the said payment you have not followed the established procedures, such as, entry in the receipt-cum-payment register, cash scroll, vault register etc and that the instructions laid down for such transactions and you are thus guilty of violating the bank's instructions.

(c) That by proposing to finance a second hand machine as new to Shri Sabhapati Sahu you have acted in a manner detrimental to the Bank's interest.

(d) That your above actions amount to violation of Regulation 19 of Staff Service Regulations applicable to you.

(e) That your above actions amount to negligence and you are guilty of that.

(f) That your above actions amount to inefficiency and that you are guilty of that.

(g) That the above actions amount to misconduct on your part."

4. The petitioner submitted his reply on 4.5.1982 (Annexure P/3) to the charge sheet dated 27.4.1982, pleading not guilty.

5. The second charge sheet was issued to the petitioner on 16.2.1985 (Annexure P/9) for the following charge:-

"Charges

You are hereby charged with demanding of and accepting from Shri Prem Chand Sande resident of Village Hasod an illegal gratification aggregating Rs. 400/- for disbursement of loan sanctioned to him. Your above act is highly prejudicial to the interest of the Bank and tantamounts to gross misconduct being in contravention of Rule 19 of Staff Service Regulations governing your services and calling for disciplinary action under the said regulations."

6. The petitioner submitted his reply on 5.3.1985 (Annexure P/11) to the charge sheet dated 16.2.1985.

7. On the basis of the reply submitted by the petitioner new de novo enquiry was ordered by letter dated 21.3.1987 (Annexure P/15) in to the first charge sheet No. 33/1937 dated 27.4.1982 and second charge sheet No. 94/P/312 dated 16.2.1985. The enquiry officer submitted his two reports on 12.3.1988. The disciplinary authority, agreeing with the enquiry reports vide his letter dated 2.4.1988

(Annexure P/27) issued the show cause notice to the petitioner proposing the penalty of dismissal from service. The petitioner submitted his reply to the second show cause notice on 23.4.1988 (Annexure P/28), denying all the allegations.

8. After having considered the enquiry report as well as the reply filed by the petitioner, the disciplinary authority by order dated 26.4.1988 (Annexure P/29-B) dismissed the petitioner from service. The petitioner preferred appeal before the Board of Directors, which was also dismissed vide order dated 23.5.1989 (Annexure P/31) passed by the appellate authority.

9. Being aggrieved, the petitioner has field this petition on the following grounds:-

(a) Firstly, the petitioner was not given pre-recorded statements, three days prior to the enquiry.

(b) Secondly, the enquiry report is vitiated on the ground that the charge-sheet was issued on the basis of the complaint filed by one Shri Nanku Ram Sahu and Shri Sabhapati Sahu which have been later on withdrawn by letter dated 6.5.1982 and 14.6.1982, respectively.

(c) Thirdly, the petitioner was not permitted to engage services of a lawyer or a person well versed with law, as per Rule 30 (3) of the Bilaspur Raipur Kshetriya Gramin Bank (Staff Service) Regulations 1980.

10. Shri N. K. Vyas, learned counsel appearing for the petitioner submits that the entire enquiry was perverse as the enquiry officer has based his enquiry on the basis of the pre-recorded statements and the petitioner was not afforded adequate and sufficient opportunity for cross-examining the witnesses. Learned counsel further submits that the enquiry could not have been initiated when the complainants themselves have withdrawn the complaints. The enquiry was vitiated on the ground that the petitioner was not permitted to engage the services of a lawyer or a man who is well versed with the law, also.

11. Shri P. K. Bhaduri, learned counsel appearing for the respondent, on the contrary, submits that it is not correct that the enquiry, particularly, with regard to the first set of charges is based on the pre-recorded statements. The complainants themselves were produced and examined. The petitioner was granted sufficient opportunity to cross-examine them but the petitioner declined to cross-examine the witnesses on the ground that he was not permitted to engage services of a lawyer or person well versed with law. Secondly, even if, the complaints have been withdrawn, in the preliminary enquiry it was found that the petitioner has committed gross misconduct and as such it was necessary in the interest of justice to conduct full-fledged departmental enquiry to find out the truth. The charges contained in first set of charges have been found proved on the basis of the reliable evidence. Learned counsel further contends that Rule 30 (3) of the Regulations is not mandatory but discretionary, as it reads that "the officer or employee may not engage a legal practitioner". With regard to the second charge-sheet, learned counsel submits that it appears that the charge is proved not on the basis of the evidence but on the basis of the pre-recorded statements, as the witnesses who had deposed earlier in preliminary enquiry have come forward and stated that they do not want to say anything in the enquiry.

12. Learned counsel lastly contended that it has been held in catena of decisions and now it is well settled principle of law that the High Court, in the cases of departmental enquiry can exercise the power of judicial review to find out whether the charges have been proved on the basis of some evidence or on the basis of no evidence but the High Court does not sit as an appellate Court to re-appreciate the evidence to reach to a different conclusion when the charges are proved on the basis of sufficient evidence.

271

13. Having heard learned counsel for the parties and perusing the records appended to the petition and return, it is evident that the first set of charges have been found proved on the basis of sufficient evidence. Shri Nanku Ram Sahu and Shri Sabhapati Sahu, who had made complaints that the petitioner/delinquent officer paid Rs. 230/- less than what was sanctioned to Shri Nanku Ram Sahu, their pre-recorded statements in the case of first set of charges were shown to the witnesses and a copy of the same was given to the defence, only for the purpose of cross-examining the witnesses on the statement made in the enquiry. Accordingly, it cannot be held that the first set of charges were found proved on the basis of the pre-recorded statements.

14. So far as the other grounds are concerned, like complaints made by the complainants were withdrawn, is not sustainable in law as it appears that the complaints were withdrawn not in exercise of their independent mind but on the basis of certain circumstances which have not come on record. However, they have clearly stated in the enquiry that the petitioner has committed misconduct by not paying the full amount sanctioned to him and Rs. 1000/- was paid for a sewing machine against grant of loan of Rs. 1500/-.

15. With regard to the third contention that the petitioner was not granted permission to engage services of a lawyer or a person well versed with the law is also not tenable in law. It is well settled principle of law that if the presenting officer of the other side is represented through a lawyer, the delinquent officer cannot be denied the assistance of a lawyer but in the present case no lawyer is engaged by the presenting officer. Rule 30 (3) does not provide for engagement of legal practitioner on behalf of the delinquent employee.

16. The Supreme Court in the cases of **Indian Overseas Bank Vs. – Indian Overseas Bank Officers' Association and another** { AIR 2001

4007}, while considering the right to have assistance of someone else to represent him to contest the charges of misconduct, has clearly held that "the law in this Country does not concede an absolute right of representation to an employee in domestic enquiry as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation." In the present case there is no rule to provide assistance of a legal man to the delinquent employee in domestic or disciplinary enquiry.

17. Now, with regard to the second charge-sheet, I have gone through the depositions of Premchand Sande, Kirtan Panch and Tokeram Lahre, who have allegedly made the statements during the preliminary enquiry that the petitioner had committed misconduct as contained in the second charge sheet dated 16.2.1985. Said witnesses have clearly stated in their depositions before the enquiry officer that they do not want to say anything with regard to the preliminary enquiry as well as the present enquiry on the second charge alleged against the petitioner. No other document was produced before the enquiry officer and the petitioner was not given an opportunity to cross-examine the authors of the earlier statements before the preliminary enquiry. It is therefore clear that the second charges were proved on the basis of no evidence and the same stands quashed.

18. The position of law is clear in view of the decision of the Supreme Court in the case of **Yoginath D. Badge** (AIR 1999 SC 3734) which has been referred in a decision of this Court in the case of **Surendra Kumar Thakur Vs. State Bank of India and others** (2006 Labour and Industrial Cases I.C. 1977) wherein the Supreme Court has held that this Court may interfere with the conclusions of the departmental enquiry if the same is found proved on the basis of no evidence. If

(273)

there is some evidence, the High Court should not sit as an appellate Court to come to a different conclusion.

19. Learned counsel for the respondent heavily relied on a decision of the Supreme Court in the case of **Ganesh Santa Ram Sirur Vs. State Bank of India and another** { (2005) 1 SCC 13} in order to support his contention that even if one charge of serious nature is proved, it is sufficient to pass the appropriate penalty on the delinquent employee.

20. In the present case one set of charges has been proved but the second charge has not been found proved. The disciplinary authority has passed the dismissal order after having considered both the charges which have been found proved. May be, if one charge, which has been quashed, is considered along with other proved charges, may result into different conclusion by the disciplinary authority. It is, therefore, desirable in the interest of justice to remit back the matter to the disciplinary authority to consider its decision of the penalty on the petitioner in the light of the decision passed by this Court in the matter.

21. In view of the foregoing, the petition is allowed in part to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur